IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 30TH NOVEMBER 2006 / 9TH AGRAHAYANA 1928

WP(C).No. 23216 of 2006(L)

PETITIONER:

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1. P.R.SUDARSANAN,
   PAYATTUVILA HOUSE, EZHUKONE VILLAGE,
   KOTTARAKKARA TALUK, QUILON DISTRICT,
   PIN - 691 505.

2. S.SREEDEVI, W/O. SUDARSANAN,
   PAYATTUVILA HOUSE, EZHUKONE VILLAGE,
   KOTTARAKKARA TALUK, QUILON DISTRICT,
   PIN-691 505.

BY ADV. SRI.V.B.HARI NARAYANAN

RESPONDENTS:

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1. THE UNION OF INDIA, REP. BY
   SECRETARY TO GOVT. OF INDIA,
   MINISTRY OF RAILWAY, RAILWAY BHAVAN,
   NEW DELHI.

2. STATE OF KERALA, REP. BY ITS
   SECRETARY TO GOVT.,
   REVENUE DEPARTMENT (F.T.P.),
   TRIVANDRUM.

3. THE DY. CHIEF ENGINEER (CONSTRUCTION),
   OFFICE OF THE DY. CHIEF ENGINEER (CONSTRUCTION),
   SOUTHERN RAILWAY, KOLLAM.

4. THE DISTRICT COLLECTOR,
   KOLLAM.

5. THE SPECIAL TAHSILDAR,
   LAND ACQUISITION RAILWAYS, KOLLAM.

R1, R3, R5 BY GOVT. PLEADER SMT.LAKSHMI RANI
R2 BY ADV. SRI.ALEXANDER THOMAS, SC,RAILWAYS

THIS WRIT PETITION (CIVIL) HAVINGCOME UP FOR ADMISSION ON 30/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN, J

W.P(C).No.23216 OF 2006

Dated this the 30th day of November, 2006

JUDGMENT

This writ petition is filed seeking exclusion of certain portions of a building which the petitioner had virtually offered under Section 49 of the Land Acquisition Act, for being acquired by the Railways. Going by the documents produced by the Railways, it is apparent that the present request to exclude a portion of the building that was offered under Section 49 is an afterthought. But after hearing counsel for parties, since one of the rooms is shown to be a shop room even by the sketch and the petitioner appears to have been using it for his commercial activities, Railways, through their learned counsel, has appropriately accepted the request that the said shoproom can be excluded. Under such circumstances, the Railways have worked out the amounts that has to be refunded by the petitioner for retaining the shoproom, which is Rs.43,086/-. The award amount, including the aforesaid amount, is lying in deposit with the Sub Court, Kottarakkara in relation to Ext.R3(c) award.

Under such circumstances, this writ petition is disposed of with the following directions:

(i) The petitioner shall forthwith surrender the entire premises excluding the shoproom and the Railways will be at liberty to pull down all the structures other than the shoproom.

(ii) After the building is demolished, this judgment would not impair any right of the petitioner to effect any construction on the land available with him subject to appropriate sanction from the competent authority in accordance with law. Any request by the petitioner for such permission will be considered by the local authority sympathtically.

(iii) On production of a certified copy of this judgment, Sub Court, Kottarakkara will issue a cheque for an amount of Rs.43.086/- in favour of Senior Assistant Financial Advisor (Construction), Southern Railway, Ernakulam, recording that it is in terms of the directions in this judgment.

(iv) Any LAR case on the basis of Ext.R3(c) will, thereafter, proceed treating the award amount as the amount after such deduction.

(v) The petitioner will forthwith execute a simple bond without sureties in favour of the Southern Railways represented by the competent officer, aggreeing to indemnify any loss that may be caused to the Railways on account of the aforesaid deduction from the award amount and also from any further loss to life or property or any danger on account of the continued retention of the shoproom without demolition.

THOTTATHIL B.RADHAKRISHNAN
Judge

kkb.